

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LISA MARIE BELYEW,
Plaintiff,

v.

M. PALLARES,
Defendant.

Case No. 1:20-cv-00623-AWI-JLT (PC)

ORDER ON NOTICE OF APPEAL

On August 20, 2020, the Court denied Plaintiff's motion to proceed *in forma pauperis* and dismissed this action without prejudice to refiling upon prepayment of the filing fee. (Doc. 16.) The Court served the order of dismissal on Plaintiff by mail on that same date. On October 9, 2020, Plaintiff filed a notice of appeal of the dismissal. (Doc. 18.)

On February 16, 2021, the Ninth Circuit Court of Appeals remanded this matter to this Court "to make a factual determination as to the date [Plaintiff] first filed a notice of appeal from the August 20, 2020 judgment." (Doc. 21.) According to her response to an order to show cause from the Ninth Circuit Court, Plaintiff contends that she delivered notices of appeal to prison authorities for mailing to this Court on August 20, 2020, and September 18, 2020. *Belyew v. Pallares*, No. 20-17035 (9th Cir. 2020) (Doc. 5).

Per the Court's orders (Docs. 23-24), on March 10, 2021, Defendant specially appeared to respond to Plaintiff's claim that she timely filed a notice of appeal. (Doc. 26.) Defendant states

1 that “it appears that the mailings made by Plaintiff on August 20, 2020, and September 18, 2020,
2 concerned other matters litigated by Plaintiff, and that she did not mail any other items to this
3 Court until October 1, 2020.” (*Id.* at 2.)

4 With his response, Defendant submitted a declaration from C. Amey-Harper, the
5 mailroom supervisor at Central California Women’s Facility (“CCWF”), where Plaintiff was
6 incarcerated at the time she filed her notice of appeal. (Doc. 26 at 6-7.) In 2020, CCWF “logged
7 outgoing legal mail in two ways.” (*Id.* at 6.) First, when the inmate submitted mail to housing unit
8 staff, “the inmate would make an entry in an outgoing mail log in [her] housing unit.” (*Id.*)
9 Second, when mailroom staff received the mail, the staff would make an entry in a separate mail
10 log. (*Id.* at 7.)

11 Ms. Amey-Harper attached both mail logs to her declaration. (*Id.* at 9-22, 24-26.)
12 According to the first log, Plaintiff submitted mail addressed to the United States District Court
13 for the Eastern District of California on August 20, 2020. (*Id.* at 12.) Per the second log,
14 mailroom staff processed a mailing to this court on August 21, 2020. (*Id.* at 24.) Plaintiff also
15 submitted mail addressed to this court on a date between September 16 and 18, 2020. (*See id.* at
16 15-16.) Mailroom staff thereafter processed a mailing to this court on September 21, 2020. (*Id.* at
17 25.) On October 1, 2020, Plaintiff submitted a third item of mail addressed to this court. (*Id.* at
18 20.) Mailroom staff then processed a mailing to this court on October 2, 2020. (*Id.* at 26.)
19 According to the logs, Plaintiff submitted no other items for mailing to this court between August
20 20 and October 1, 2020.

21 On August 24, 2020, the clerk of this court filed a motion to compel from Plaintiff in
22 *Belyew v. Duch, et al.*, Case No. 2:17-cv-1213-JAM-EFB (E.D. Cal). (Doc. 26 at 47-53.) The
23 motion and associated proof of service are dated August 20, 2020. (*Id.* at 48, 53.) On September
24 23, 2020, the clerk of this court filed a motion *in limine* from Plaintiff in *Belyew v. Lorman, et al.*,
25 No. 2:17-cv-0723-MCE-CKD (ED. Cal.). (Doc. 26 at 55-59). The motion is dated September 11,
26 2020, and the associated proof of service is dated September 18, 2020. (*Id.* at 58, 59.)

27 Based on the corresponding dates, Defendant states that it appears that the August 20 and
28 September 18, 2020 mailings to which Plaintiff refers are, in fact, the motion to dismiss and the

1 motion *in limine* from the *Duch* and *Lorman* cases. (Doc. 26 at 3.) Plaintiff's October 1 mailing
2 also corresponds with the notice of appeal from this case, which is dated October 1, 2020, and
3 was filed by the clerk of the court on October 9, 2020.

4 The Court additionally notes that it would be highly unlikely for Plaintiff to have
5 submitted a notice of appeal of in this case on August 20, 2020, when the Court served its order
6 of dismissal by mail on that same date. That is, Plaintiff would not have received the order of
7 dismissal at CCWF in Chowchilla, California, on the same date it was mailed from the courthouse
8 in Fresno, California. This further supports a finding that Plaintiff's pre-October 1 mailings were
9 actually filings in other cases.

10 Plaintiff filed a reply to Defendant's response on March 17, 2020. (Doc. 27.) Plaintiff
11 states that she is "unable to provide the documented proof of the dates [she] sent [her] legal mail
12 to this Court, although the proof is on [her] legal mail history printout provided by Custodial
13 Officer Stuart" at CCWF. (*Id.* at 2.) Plaintiff does not address Defendant's contention that the
14 mailings she submitted on August 20 and September 18, 2020, were, in fact, filings in other cases.
15 She also does not dispute the authenticity or accuracy of the mail logs provided by the CCWF
16 mailroom supervisor, and the Court has no reason to believe that these would differ from the
17 "mail history printout" from a CCWF correctional officer to which Plaintiff refers.

18 Based on the foregoing, the Court finds that Plaintiff submitted a notice of appeal from the
19 August 20, 2020 judgement for forwarding to this Court on October 1, 2020. Per the prison
20 mailbox rule, Plaintiff constructively filed the notice on that date. *See Douglas v. Noelle*, 567
21 F.3d 1103, 1106-07 (9th Cir. 2009). The Court finds that Plaintiff did not submit a notice of
22 appeal from the August 20, 2020 judgement prior to October 1, 2020.

23 The Court directs the Clerk of the Court to serve a copy of this order on the Ninth Circuit
24 Court of Appeals.

25
26 IT IS SO ORDERED.

27 Dated: April 15, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE